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*Attorneys for Defendants*

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DONALD HEIMSTAEDT and TODD KORTE,

Civil Action No.: 07 CIV 9389 (JSR)

*Plaintiffs,*

*-against-*

**NOTICE OF MOTION TO  
DISMISS PURSUANT TO  
FED. R. CIV. P. 12(b)(6) AND (9)(b)**

PREM.AIR NEW YORK, LLC, PREM.AIR GROUP  
OF NEW YORK, LLC, PREM.AIR GROUP, LLC,  
MCQUAY NEW YORK, LLC, GEORGE KOUTSSOS,  
ERIC BERKOWITZ, MCQUAY NEW YORK PROFIT  
SHARING PLAN, and XYZ TRUSTEES OF THE  
MCQUAY NEW YORK, LLC 401(k) PROFIT  
SHARING PLAN,

*Defendants.*

-----X

**PLEASE TAKE NOTICE**, that upon the affidavit of George Koutsos, sworn to on the 20<sup>th</sup> day of February 2008, with the exhibits annexed thereto, the affirmation of Arthur J. Semetis, dated February 21, 2008, with the exhibits annexed thereto, the memorandum of law submitted herewith, and upon the pleadings and proceedings heretobefore had herein, defendants, Prem.Air Group of New York LLC (f/k/a McQuay New York LLC), Prem.Air Group LLC, George Koutsos (i/n/a George Koutssos) and Eric Berkowitz shall move this Court, before Honorable Jed S. Rakoff, U.S.D.J., at the United States Courthouse, 500 Pearl Street, New York, New York 10007, on March 13, 2008 at 9:00 a.m., for an Order, pursuant to the Fed.

Rules Civ. Proc. 12 (b) (6) and 9 (b) dismissing the following counts in the First Amended Complaint:

(i) Defendant Prem.Air Group LLC seeks dismissal of the Fourth Count of the First Amended Complaint sounding in breach of contract on the grounds that it was not a party to the oral contracts that are the subject of the Complaint since it was not legally formed until May 21, 2006, and that neither plaintiff was ever employed by this separate limited liability company.

(ii) Defendants Prem.Air Group of New York LLC (f/k/a McQuay New York LLC), Prem.Air Group LLC, George Koutsos and Eric Berkowitz seek dismissal of the Fifth Count of the First Amended Complaint sounding in Fraud and Misrepresentation for failure to satisfy the pleading requirements of Fed. R. Civ. P. 9(b).

(iii) Defendants Prem.Air Group of New York LLC (f/k/a McQuay New York LLC), Prem.Air Group LLC, George Koutsos and Eric Berkowitz seek dismissal of the Sixth and Seventh Counts of the First Amended Complaint sounding in Quantum Meruit and Unjust Enrichment based upon the unavailability of this relief in an action based upon contract.

(iv) Defendants George Koutsos and Eric Berkowitz also seek dismissal of the Eighth Count of the First Amended Complaint seeking to Pierce the Corporate Veil for plaintiffs' failure to adequately plead the requisite elements of the same in their Complaint;

(v) Together with such other and further relief as the Court may deem just and proper.

Plaintiffs Donald Heimstaedt and Todd Korte shall file and serve their opposition to this motion by March 6, 2008;

The moving defendants shall file and serve their reply by March 13, 2008; and

Oral Argument shall be had before this Court on March 19, 2008 at 2:30 P.M.

Dated: New York, New York  
February 21, 2008

**ARTHUR J. SEMETIS, P.C.**

/s/

By: \_\_\_\_\_  
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New York LLC f/k/a McQuay  
New York LLC, Prem.Air Group,  
LLC, George Koutsos i/n/a  
George Koutssos, Eric Berkowitz,  
Prem.Air NY 401(k) Profit Sharing  
Plan f/k/a McQuay New York LLC  
401(k) Profit Sharing Plan i/n/a  
McQuay New York Profit Sharing  
Plan, and XYZ Trustees of the  
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